

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WALBRIDGE ALDINGER COMPANY, a
Michigan corporation,

Plaintiff,

vs.

Case No. 2:06cv11161
Hon. Robert H. Cleland

AON RISK SERVICES, INC. OF
PENNSYLVANIA, a/k/a AON RISK
SERVICES OF PA, a Pennsylvania
Corporation,

Magistrate Judge Donald A. Scheer

Defendant.

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**PLAINTIFF'S MOTION AND BRIEF FOR LEAVE OF COURT TO REPLY TO
DEFENDANT AON RISK SERVICE INC. OF PENNSYLVANIA'S REPLY TO
PLAINTIFF'S RESPONSE TO AON'S MOTION TO STRIKE PLAINTIFF'S EXPERT
REPORT AND ASSOCIATED BRIEF**

Plaintiff Walbridge Aldinger Company (“Walbridge”) files this Motion to Reply to Defendant Aon Risk Service Inc. of Pennsylvania’s (“Aon”) Reply to Plaintiff’s Response to Aon’s Motion to Strike (“Motion to Strike”) Plaintiff’s Expert Report and Associated Brief (“Motion to Reply”) and moves this Court for an order allowing Plaintiff leave to file said reply brief within five (5) days of such order. In support of its Motion to Reply, Walbridge states:

1. On February 23, 2007, Aon filed its Motion to Strike Walbridge’s Expert Report on the grounds that (i) the report does not contain the basis and reasons supporting the opinions contained in the report and (ii) is inadmissible under Federal Rule of Evidence 702. *See* Aon’s Motion to Strike.

2. On March 8, 2007, Walbridge filed its Response to Aon’s Motion to Strike addressing each of the contentions made in Aon’s Brief in support of its Motion to Strike.

3. On March 13, 2007, Aon filed a motion seeking leave of court to extend the length of its Reply Brief (“Motion to Extend”) from five (5) to twenty (20) pages.

4. On March 14, 2007, this court granted Aon’s Motion to Extend.

5. On or about March 15, 2007, Aon served on Walbridge its Reply Brief. Aon’s Reply Brief is 19 pages long and incorporates by reference more than 150 pages of new material, including transcripts from other proceedings wholly irrelevant to the instant proceedings¹.

6. Moreover, Aon’s Reply Brief attempts now to establish new bases of support for their Motion to Strike which are non-existent in their earlier Brief in Support of their Motion to Strike. For example, Aon now alleges in its Reply Brief that (i) “Downey’s opinion does not match the Complaint” [Reply Brief, p. 1, 4], (ii) Aon will be dismissing its Affirmative Defenses

¹ Aon not only incorporates testimony from other, irrelevant proceedings, but also incorporates and relies on information gained during Mr. Downey’s deposition which was objected to by counsel for Walbridge. Inasmuch as this Court has yet to rule on the proffered objections, it is not yet clear that such information is admissible in this case and Aon’s reliance thereon is premature.

of Duty of Care so as to preclude the Expert Report from being relevant² [Reply Brief, p. 4 n. 4], (iii) that Downey's opinion is a legal conclusion and, as such, inadmissible [Reply Brief, p. 5], (iv) that Aon is not a surety [Reply Brief, p. 14], and (v) that the Expert Report contains false and misleading information [Reply Brief, p. 17].

7. None of these new claims were present in Aon's Brief in support of their Motion to Strike. Ostensibly, Aon would have this Court fashion a remedy whereby Aon may seek relief without allowing Walbridge an opportunity to respond. Such an action would surely run afoul of due process and equal protection concerns.

8. On March 21, 2007, counsel for Walbridge left a detailed voicemail with Aon's counsel seeking concurrence for the relief sought in this motion. As of the time of this filing, Aon's counsel has not responded and no concurrence had otherwise been granted.

WHEREFORE, Walbridge respectfully requests that this court enter an order granting to Walbridge leave to file a Reply Brief to Aon's Reply to Plaintiff's Response to Aon's Motion to Strike Plaintiff's Expert Report and Associated Brief within seven (7) days of this Court's granting of such order.

Date: March 21, 2007

Respectfully submitted,

By: /s/ Anthony J. Abate

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² It is noteworthy that while Aon has declared its intention to dismiss such Affirmative Defenses, no such dismissal was attached to Aon's Reply Brief or has otherwise been submitted. Inasmuch as Aon acknowledges by this concession the relevancy of Walbridge's Expert Report and has otherwise failed to dismiss such Affirmative Defenses, Aon's Motion to Strike should be denied.

And

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**BRIEF IN SUPPORT OF MOTION FOR LEAVE OF COURT TO REPLY TO
DEFENDANT AON RISK SERVICE INC. OF PENNSYLVANIA'S REPLY TO
PLAINTIFF'S RESPONSE TO AON'S MOTION TO STRIKE PLAINTIFF'S EXPERT
REPORT AND ASSOCIATED BRIEF**

For its Brief in Support, Walbridge relies on the arguments set forth in the accompanying Motion above.

Date: March 21, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2007, a true copy of the foregoing **Plaintiff's Motion and Brief for Leave of Court to Reply to Defendant Aon Risk Service Inc. of Pennsylvania's Reply to Plaintiff's Response to Aon's Motion to Strike Plaintiff's Expert Report and Associated Brief** has been furnished by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all counsel of record to:

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